

PL 1
Gillhody
30468

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-216676

DATE: February 19, 1985

MATTER OF: Leslie & Elliott Company

DIGEST:

Failure to provide a price for a bid item as requested by an amendment may be waived as a minor informality where bidder acknowledged receipt of the amendment, the change effected by the amendment was immaterial, and waiver would not be prejudicial to other bidders. E. H. Morrill Company, 63 Comp. Gen. 348 (1984), 84-1 C.P.D. ¶ 508; Goodway Graphics of Virginia, Inc., B-193193, Apr. 3, 1979, 79-1 C.P.D. ¶ 230, and similar cases modified.

Leslie & Elliott Company protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62472-84-B-3314, issued by the Department of the Navy to replace street lighting at the Naval Submarine Base New London, Groton, Connecticut.

Although Leslie & Elliott acknowledged receipt of amendment 3 to the IFB, its low bid was rejected because it did not contain a price for bid item 2. After bid opening, Leslie & Elliott notified the contracting officer that it included the cost of bid item 2 in bid item 1. Leslie & Elliott maintains that its failure to provide a price for bid item 2 is a minor informality which should be waived by the Navy. The Navy is withholding award pending our resolution of the protest. We sustain the protest.

The IFB, as issued, called for bids on two items. Bid item 1 was for all construction work except for that covered in bid item 2. Bid item 2 was for removing an estimated 20 cubic yards of hard material and replacing it with clean backfill. The bid instructions called for a combined "fixed-price lump-sum" and "requirements" type contract, with the requirements portion covering the work under bid item 2. The government did not guarantee that any work under bid item 2 would be required. Award would be made to the conforming responsible bidder offering the low aggregate sum of the bid item prices.

031256

The bid form in the IFB package only contained a space for bid item 1. Amendment 3 noted that the bid form inadvertently omitted bid item 2 and furnished a new bid form with both bid items. Leslie & Elliott acknowledged amendment 3, but submitted its bid on the original bid form which did not show a price for item 2. After bid opening, Leslie & Elliott notified the contracting officer that it had included the estimated 20 cubic yards of rock removal requested by bid item 2 at \$50 per cubic yard (\$1,000) in its \$466,666 price for bid item 1. Leslie & Elliott also contended that if there was any problem with its bid, it was a minor informality which should be waived by the Navy.

In its report to our Office, the Navy concludes that the imperfection in the bid does not justify its rejection. The government estimate was \$420,000 for bid item 1 and \$1,000 for bid item 2. The second low bidder's total price was \$560,000, of which \$2,000 was for item 2. The government estimate for bid item 2 was 0.238 percent of the total government estimate, 0.214 percent of the protester's bid, and 1.071 percent of the \$93,334 difference between the protester's bid and that of the second low bidder. From these figures, the Navy concludes that the bid item 2 work is de minimis and that it would be in the government's best interest to find the protester's bid responsive. We agree.

A contracting officer can waive a defect in a bid as a minor informality if the defect is immaterial and if waiver will not be prejudicial to other bidders. The defect is immaterial if the effect on price, quantity, quality or delivery is negligible when contrasted with the total cost or scope of the services being acquired. Federal Acquisition Regulation (FAR), § 14.405, 48 Fed. Reg. 42,102, 42,180 (1983) (to be codified at 48 C.F.R. § 14.405). No precise standard can be employed in determining whether a change effected by an amendment is negligible in terms of price and, consequently, a determination must be based on the particular facts of each case. However, in determining whether the value of an amendment is negligible, we look at the amendment's estimated impact on bid prices and the relationship of that impact to the difference between the two low bids. 52 Comp. Gen. 544 (1973). We use the government's estimate of cost significance, not the protester's, when determining materiality. See Marino Construction Company, 61 Comp. Gen. 269 (1982), 82-1 C.P.D. ¶ 167.

In this case, amendment 3 changed the bid form by asking for a price on both bid items 1 and 2, instead of just bid item 1. The government estimate for bid item 2 was 0.238 percent of the total government estimate, 0.214 percent of the protester's bid, and 1.071 percent of the difference between the protester's bid and that of the second low bidder. The value of the change effected by amendment 3 was negligible in terms of price.


The effect of Leslie & Elliott's omission of a price for bid item 2 on quality, quantity or delivery also appears negligible, when contrasted with the total cost of the services being acquired. The agency estimated that under bid item 2, only 20 cubic yards of hard material would be required to be removed and replaced with clean backfill. Given the great disparity in bid prices offered by Leslie & Elliott and the second low bidder, Leslie & Elliott's failure to include a price for bid item 2 also had no effect on the competitive standing of the bidders.

The second low bidder in this case argues that Leslie & Elliott's omission of a price for item 2 should not be waived as a minor informality, based on our decision in E. H. Morrill Company, 63 Comp. Gen. 348 (1984), 84-1 C.P.D. ¶ 508. In that case, we found nonresponsive a bid that did not provide prices for option work added by an amendment whose receipt was acknowledged. The circumstances in that case differ from those here. In Morrill, and also in Goodway Graphics of Virginia, Inc., B-193193, Apr. 3, 1979, 79-1 C.P.D. ¶ 230, the facts show that the omitted item was an essential and integral part of the overall contract performance, material and indivisible from the other aspects of performance. Here, there is no need for the same contractor, who is installing lights, to remove the hard material, if encountered. We believe that where an omitted item is divisible from the contract requirements, is de minimis as to total cost, and would clearly not affect the competitive standing of the bidders, it may be waived. We find the facts here support waiver of the omission. Therefore, the Navy should waive Leslie & Elliott's defect in bid as a minor informality, since the defect is immaterial and waiver will not be prejudicial to other bidders. To the extent that Morrill, Goodway, and

B-216676

similar cases imply that the failure to price a line item automatically requires rejection of the bid, they are modified in accordance with the above.

The protest is sustained and we recommend that, if Leslie & Elliott is determined to be responsible, award be made to it.

for 
Comptroller General
of the United States